

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRUCE EDWARD SMITH,

Defendant.

NO. CR07-0330RSL

ORDER DENYING
DEFENDANT'S APPEAL OF
DETENTION ORDER

THIS MATTER having come on before the Court, upon the defendant's Appeal of Detention Order (*see* docket entry no. 32), and the Court having considered the defendant's motion, the plaintiff's response, the other pleadings in this matter, and having heard from the parties on December 18, 2007, and good cause having been shown, now, therefore, the Court hereby finds as follows:

On September 16, 2007, Defendant Bruce Edward Smith was arrested. By Complaint sworn on September 17, 2007, Defendant was charged with Possession of Visual Depictions of Minors Engaging in Sexually Explicit Conduct, in violation of 18 U.S.C. §§ 2252(a)(4) and 2252(b)(2). The government moved for detention.

On September 20, 2007, a detention hearing was held before the Honorable James P. Donohue. Because Defendant was charged only with possession of child pornography, the presumption of detention did not apply. *See* 18 U.S.C. § 3142(e). After

1 hearing the argument of counsel and reviewing the Pretrial Services report, the Court
 2 released Defendant on bond, subject to supervision by Pretrial Services and subject to
 3 conditions, including participation in the Global Positioning Satellite program and all
 4 requirements thereto. At that time, it was intended that Defendant would reside with his
 5 father and stepmother.

6 On September 26, 2007, a federal grand jury issued an indictment charging
 7 Defendant in Count 1 with Transportation of Visual Depictions of Minors Engaging in
 8 Sexually Explicit Conduct, in violation of 18 U.S.C. §§ 2252(a)(1) and 2252(b)(1), and, in
 9 Count 2, with Possession of Visual Depictions of Minors Engaging in Sexually Explicit
 10 Conduct, in violation of 18 U.S.C. §§ 2252(a)(4) and 2252(b)(2).

11 On October 1, 2007, Defendant was arraigned. At that time, the Honorable
 12 James P. Donohue also conducted a bond review hearing. At the bond review hearing, it
 13 was undisputed that Defendant could not reside with his father and stepmother due to the
 14 proximity of a day care facility and a computer business run out of the residence. Having
 15 heard the argument of counsel, the Magistrate Court issued an order stating in part as
 16 follows:

- 17 (1) Pursuant to 18 U.S.C. § 3142(e), there is a rebuttable presumption that
 18 defendant is a flight risk and a danger to the community based on the
 19 nature of the pending charges. This places a limited burden of
 20 production on the defendant, although the burden of persuasion
 21 remains with the government. Application of the presumption in favor
 22 of detention is appropriate in this case.
- 23 (2) Housing arrangements that were once thought appropriate are not.
- 24 (3) Defendant has stipulated to detention, but reserves the right to contest
 his continued detention if there a change in circumstances.
- 25 (4) There appear to be no conditions or combinations of conditions other
 than detention that will reasonably address the risk of flight and risk of
 26 danger to other persons or to the community.

27 *See* Order dated October 1, 2007 (docket entry no. 15).

28 On October 25, 2007, the defense filed a motion to reopen the detention hearing.
 On November 16, 2007, oral argument was held before the Honorable James P. Donohue.
 After hearing argument of counsel, the Magistrate Court explained that it had originally

1 ordered GPS monitoring to minimize flight risk and protect the public, without regard to
2 the requirements of the Adam Walsh Act. The Magistrate Court explained that the housing
3 arrangements previously thought suitable were not. The Magistrate Court ordered
4 Defendant's continued detention in light of the applicable presumption of detention; the
5 fact that Defendant's wife and Defendant resided in the Philippines; and Defendant had
6 substantial reasons to flee.

7 On November 28, 2007, the defense filed an appeal in the District Court of the
8 Magistrate Court's detention order. On December 18, 2007, oral argument was held on the
9 appeal before this Court. After conducting a *de novo* review of the Magistrate Court's
10 order of detention, this Court ruled that Defendant was to remain in custody. In
11 determining that detention was appropriate, this Court noted that there was a
12 rebuttable presumption that defendant is a flight risk based upon the nature of the pending
13 charges, *i.e.*, Transportation of Child Pornography, in violation of 18 U.S.C. § 2252. The
14 presumption was not rebutted in this case, in light of Defendant's residence with his wife
15 in the Philippines; Defendant's limited ties to this District; and Defendant's extensive
16 travel in areas where exploitation of children is known to occur.

17 Accordingly, it is hereby ORDERED that Defendant's Appeal of Detention Order is
18 DENIED. Defendant shall be detained pending trial in this matter.

19 Finally, this Court did not impose the Adam Walsh Act (AWA) requirements of
20 home confinement and electronic monitoring in the instant case or rely upon those

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1 requirements of the AWA. Accordingly, this Court declines to reach the issue of the
2 constitutionality of the AWA.

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5 DATED this 22nd day of January, 2008.

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8 Robert S. Lasnik
9 United States District Judge

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11 Presented by:

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15 s/ Karyn S. Johnson

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